

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of HUNTER THOMAS  
FERGUSON, Minor.

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DENA FERGUSON KALLGREN,  
  
Petitioner-Appellant,

and

PETER FINLEY KALLGREN,  
  
Petitioner,

v

THOMAS SCOTT FERGUSON,  
  
Respondent-Appellee.

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UNPUBLISHED  
June 12, 2007

No. 273915  
Oakland Circuit Court  
Family Division  
LC No. 2006-717052-AY

Before: Davis, P.J., and Hoekstra and Donofrio, JJ.

PER CURIAM.

Petitioner Dena Kallgren appeals as of right from a circuit court order denying her petition to terminate respondent's parental rights pursuant to MCL 710.51(6). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

"A petitioner in an adoption proceeding must prove by clear and convincing evidence that termination of parental rights is warranted." *In re Hill*, 221 Mich App 683, 691; 562 NW2d 254 (1997). The trial court's findings of fact are reviewed for clear error. *Id.* at 691-692. "A finding is clearly erroneous if, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made." *Id.* at 692.

MCL 710.51(6) provides:

If the parents of a child are divorced . . . and if the parent having legal custody of the child subsequently marries and that parent's spouse petitions to adopt the child, the court upon notice and hearing may issue an order terminating the rights of the other parent if both of the following occur:

(a) The other parent, having the ability to support, or assist in supporting, the child, has failed or neglected to provide regular and substantial support for the child or if a support order has been entered, has failed to substantially comply with the order, for a period of 2 years or more before the filing of the petition.

(b) The other parent, having the ability to visit, contact, or communicate with the child, has regularly and substantially failed or neglected to do so for a period of 2 years or more before the filing of the petition.

Because support orders were in place, respondent's ability to pay support is irrelevant. The only issue to be determined with respect to § 51(6)(a) is substantial compliance for the two-year period, *In re Hill, supra* at 692, although the court may consider the reasons for noncompliance with the order. *In re Martyn*, 161 Mich App 474, 480; 411 NW2d 743 (1987). Substantial compliance has been defined as "a regular, bona fide pattern of payment" over the requisite period. *In re CDO*, 39 P3d 828, 831 (Okla App, 2001).

For the 25-month period from February 1, 2004 to February 1, 2006, inclusive, respondent owed \$8,527 in child support. Respondent made 16 support payments, sometimes going as long as three months between payments. The payments varied in amount, ranging from \$70 to \$1,650. The 16 payments totaled \$5,093.99, approximately 60 percent of what respondent owed, and averaged \$318 a payment. While respondent did not pay support every month and did not pay the full amount due most months, we are not convinced that the trial court clearly erred in finding that respondent did substantially comply with the support order, i.e., he demonstrated a regular pattern of payments showing a good-faith effort to meet his support obligations. "In order to terminate parental rights under the statute, the court must determine that the requirements of subsections (a) and (b) are both satisfied." *In re ALZ*, 247 Mich App 264, 272; 636 NW2d 284 (2001). Because petitioner failed to meet her burden of proof with respect to § 51(6)(a), the trial court did not err in denying the petition.

Affirmed.

/s/ Alton T. Davis  
/s/ Joel P. Hoekstra  
/s/ Pat M. Donofrio